

ORIGINAL
FILED

07 OCT 24 PM 1:09
RICHARD W. WHEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-Filed

SCOTT A. FLAXMAN (SBN 241285)
SCOTT A. FLAXMAN, ATTORNEY AT LAW
21 Buena Vista Road
South San Francisco, CA 94080
Telephone: (415) 571-0582
Facsimile: (650) 952-0409
scottflaxman@yahoo.com

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MJJ

Case No. **C 07 5433**
COMPLAINT FOR VIOLATION OF
FEDERAL REAL ESTATE SETTLEMENT
PROCEDURES ACT

DEMAND FOR JURY TRIAL

ALI BAALOUACH,

Plaintiff,

vs.

MEHDI NAFAI, DORIS ALICIA CORDOVA,

SUMMIT MORTGAGE,

REALTY MORTGAGE, LLC,

Doe 1 through Doe 10,

Defendants

PRELIMINARY STATEMENT

1. This Complaint is filed and these proceedings are instituted under the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq. ("RESPA"), seeking to recover actual damages, treble damages, and court costs, by reason of Defendants' violations of RESPA and Regulation X, 24 C.F.R. § 3500.1 et seq. ("Regulation X"). This Complaint is also brought to raise additional claims against Defendants for breach of fiduciary duty and California Statutory, 'Deceit.' This Complaint seeks actual damages and punitive damages for those claims as well.

JURISDICTION AND VENUE

2. Personal jurisdiction over Defendants is proper before this Court.
3. Counts I and II of this action arise under and are brought pursuant to the Federal Real Estate Settlement Procedures Act of 1974, as amended, 12 U.S.C. §2601 et seq. (hereinafter "RESPA"); thus, federal subject matter jurisdiction is properly founded upon 28 U.S.C. § 1331.
4. This Court has supplemental jurisdiction over the pendent state claims, set out in Counts III and IV pursuant to 28 U.S.C. § 1367.

- 1 5. Venue over Defendants is proper before this Court pursuant to 28 U.S.C. §1391(b)(2)
2 and 12 U.S.C. § 2614.
3

4 **STATUTORY FRAMEWORK OF RESPA**
5

- 6 6. The Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq. ("RESPA") was
7 enacted on December 22nd, 1974.
8
9 7. Congress noted that "significant reforms in the real estate settlement process are
10 needed to insure that consumers throughout the Nation are protected from
11 unnecessarily high settlement charges caused by certain abusive practices that have
12 developed in some areas of the country." 12 U.S.C. § 2601(a).
13
14 8. One purpose of RESPA is "to effect certain changes in the settlement process for
15 residential real estate that will result ... in the elimination of kickbacks or referral fees."
16 12 U.S.C. § 2601(b).
17
18 9. RESPA applies to "federally related mortgage loans," which is defined at 12 U.S.C. §
19 2602(1). RESPA initially applied only to certain first liens on residential real property.
20 On October 28, 1992, the law was amended to cover subordinate liens and loans used
21 to prepay or pay off an existing loan secured by the same property. 12 U.S.C. §
22 2602(1); 24 C.F.R. § 3500.2.
23
24 10. RESPA prohibits kickbacks and referral fees: "No person shall give and no person
25 shall accept any fee, kickback, or thing of value pursuant to any agreement or

1 understanding, oral or otherwise, that business incident to or a part of a real estate
2 settlement service involving a federally related mortgage loan shall be referred to any
3 person." 12 U.S.C. § 2607(a).

4
5 11. RESPA prohibits unearned fees: "No person shall give and no person shall accept any
6 portion, split, or percentage of any charge made or received for the rendering of a real
7 estate settlement service in connection with a transaction involving a federally related
8 mortgage loan other than for services actually performed." 12 U.S.C. § 2607(b).

9
10 12. RESPA requires that the lender provide to the borrower a settlement statement which
11 shall "conspicuously and clearly itemize all charges imposed upon the borrower ... in
12 connection with the settlement." 12 U.S.C. § 2603(a).

13
14 13. RESPA requires that the lender and mortgage broker provide to the borrower "a good
15 faith estimate of the amount or range of charges for specific settlement services the
16 borrower is likely to incur in connection with the settlement." 12 U.S.C. § 2604(c); 24
17 C.F.R. § 3500.7.

18
19 14. The term "settlement services" includes "any service provided in connection with a real
20 estate settlement including, but not limited to, ...the origination of a federally related
21 mortgage loan (including, but not limited to, the taking of loan applications, loan
22 processing, and the underwriting and funding of loans)." 12 U.S.C. § 2602(3); 24
23 C.F.R. § 3500.2.

FACTS

15. The Plaintiff, Ali Baalouach, an individual, hereinafter ("Mr. Baalouach") is a 30 year-old resident alien, from Morocco. Mr. Baalouach is the owner of real property located at 68 Cayuga Avenue, San Francisco, California 94112, ("Property") where he also resides and his profession is butcher.

16. Mr. Baalouach speaks Moroccan "Berber" as his first language and Arabic as his second language. Mr. Baalouach speaks limited English and can read almost no English.

17. Upon information and belief, Defendant DORIS ALICIA CORDOVA, an individual, is a California, Department of Real Estate licensed real estate broker and the responsible broker and corporate officer of Defendant SUMMIT MORTGAGE.

18. Upon information and belief Defendant DORIS ALICIA CORDOVA is also known as DORA CORDOVA and DORA ALICIA CORDOVA.

19. Upon information and belief Defendant DORIS ALICIA CORDOVA legally changed her first name from DORA to DORIS.

- 1 20. Upon information and belief Defendant SUMMIT MORTGAGE is a mortgage
2 brokerage corporation licensed by the California Department of Real Estate with an
3 address at: 1220 Oakland Boulevard, Suite #200, Walnut Creek, California 94596.
4
5
6
7 21. Upon information and belief, Defendant REALTY MORTGAGE, LLC is a home loan
8 lending company with an office located at 2901 Douglas Blvd., Suite #205, Roseville,
9 California 95661.
10
11 22. Upon information and belief, at all times material to this action, Defendants DORIS
12 ALICIA CORDOVA, SUMMIT MORTGAGE, REALTY MORTGAGE, LLC and
13 Doe 1 through Doe 10 made residential loans, including "federally related loans" as
14 that phrase is defined by RESPA.
15
16 23. Mr. Baalouach does not know the true names of the Defendants sued as Doe 1 through
17 Doe 10.
18
19 24. Upon information and belief, at all times material to this action, Defendant SUMMIT
20 MORTGAGE and Defendant DORIS ALICIA CORDOVA conducted business as a
21 "mortgage broker" as that phrase is defined by Regulation X at 24 C.F.R. § 3500.2. As
22 such, Defendant SUMMIT MORTGAGE and Defendant DORIS ALICIA
23 CORDOVA, provided real estate "settlement services" as that phrase is defined by
24 RESPA at 12 U.S.C. § 2602(3) and at 24 C.F.R. § 3500.2.
25

1 25. On or about September, 2006 Mr. Baalouach discussed the possibility of refinancing
2 the Property with Defendant MEHDI NAFAI, an individual ("Defendant NAFAI").

3
4 26. All conversations between Mr. Baalouach and Defendant NAFAI regarding the
5 refinancing of the Property were conducted in Arabic.

6
7
8 27. Upon information and belief, at all times relevant herein, Defendant NAFAI was acting
9 as agent and/or employee of Defendant SUMMIT MORTGAGE and Defendant
10 DORIS ALICIA CORDOVA.

11
12 28. Mr. Baalouach's only information and communication, prior to the date of loan
13 closing, regarding the refinancing of the Property came from information supplied by
14 Defendant NAFAI either in person or by telephone. Defendant NAFAI supplied all
15 information concerning refinancing the Property to Mr. Baalouach exclusively in
16 Arabic.

17
18 29. Defendant NAFAI agreed to serve as Mr. Baalouach's agent and to provide him with
19 mortgage brokerage services in connection with Mr. Baalouach's desire to refinance
20 the existing loans on the Property. In fact, Defendant NAFAI represented to Mr.
21 Baalouach that Defendant NAFAI and Defendant NAFAI's company, Defendant
22 SUMMIT MORTGAGE would assist Mr. Baalouach in obtaining a good loan at a low
23 interest rate.

1 30. Defendant NAFAI represented to Mr. Baalouach that the total fee Defendant NAFAI,
2 Defendant DORIS ALICIA CORDOVA and Defendant SUMMIT MORTGAGE
3 would receive for the mortgage brokerage services in connection with the refinance of
4 the Property would not exceed a total of \$3,500.00 (Three thousand five hundred
5 dollars).

6
7 31. Defendant NAFAI represented to Mr. Baalouach that the total fee Defendant NAFAI,
8 Defendant DORIS ALICIA CORDOVA and Defendant SUMMIT MORTGAGE
9 would receive for the mortgage brokerage services in connection with the refinance of
10 the Property would be paid entirely by the lender and that Mr. Baalouach would NOT
11 bear any of the cost of the fee.

12
13
14 32. Pursuant to 12 U.S.C. §§ 2604 and 2607, Defendant SUMMIT MORTGAGE,
15 Defendant DORIS ALICIA CORDOVA and Defendant NAFAI were obligated to
16 disclose fully all costs, expenses, and fees from others, and not to accept any kickbacks
17 from others, associated with the "federally related mortgage loan" and Defendant
18 SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA and Defendant
19 NAFAI'S provision of mortgage brokerage services.

20
21
22 33. Defendant NAFAI provided to Mr. Baalouach and Defendants DORIS ALICIA
23 CORDOVA, SUMMIT MORTGAGE, REALTY MORTGAGE, LLC and Doe 1
24 through Doe 10, loan application information and paperwork necessary to secure a
25 "federally related mortgage loan."

1
2 34. Upon information and belief, the existing first loan on the Property was secured by a
3 Deed of Trust with EMC Corporation as the beneficiary. The existing second loan on
4 the Property was secured by a Deed of Trust with Greenpoint Mortgage as the
5 beneficiary.

6
7 35. Upon information and belief the loans supplied for the refinance were brokered by
8 Defendant SUMMIT MORTGAGE and Defendant DORIS ALICIA CORDOVA and
9 funded by Defendant REALTY MORTGAGE, LLC. Funds from the refinance were
10 paid out to EMC Corporation in satisfaction of the First Trust Deed secured by the
11 Property in the amount of \$687,315.53. Funds were paid out to Greenpoint Mortgage
12 in satisfaction of the Second Trust Deed secured by the Property in the amount of
13 \$85,372.48.
14

15
16 36. On or about October 26th, 2006 Defendant NAFAL, Defendant DORIS ALICIA
17 CORDOVA, SUMMIT MORTGAGE, REALTY MORTGAGE, LLC and Doe 1
18 through Doe 10 conducted a loan closing to consummate its residential loan to Mr.
19 Baalouach, such loan being a "federally related mortgage loan" as defined by RESPA
20 at 12 U.S.C. § 2602(1) and at 24 C.F.R. § 3500.2.
21

22 37. Upon information and belief, the loan closing was conducted at 3000 Clayton Road,
23 Concord, California 94519.
24
25

1 38. The proceeds of the two, new loans were to refinance the two, existing deeds of trust
2 secured by the Property and for personal, family or household purposes.

3
4 39. The two loans were secured against title to Mr. Baalouach's principal dwelling, the
5 Property, by two Separate Deeds of Trust recorded with the San Francisco Assessor-
6 Recorder. The First Deed of Trust is recorded as DOC-2006-I278024-00, Acct 4-Old
7 Republic Title Company, Thursday, November 2nd, 2006, Reel J259 Image 0160. The
8 Second Deed of Trust is recorded with the San Francisco Assessor-Recorder, as DOC-
9 2006-I278025-00, Acct 4-Old Republic Title Company, Thursday, November 2nd,
10 2006, Reel J259 Image 0161.

11
12
13 40. On or about November 1, 2006, Mr. Baalouach received a "HUD-1" Settlement
14 Statement ("Settlement Statement"), dated November 1, 2006.

15
16 41. A true and accurate copy of the "Settlement Statement" is attached to this Complaint as
17 Exhibit A, and by this reference is incorporated herein [*not reprinted herein*].

18
19 42. Among the various fees charged in connection with Mr. Baalouach's loan included an
20 "Appraisal Fee" of \$350, "Tax Service Fee" of \$65, "Underwriting Fee" of \$775, a
21 "Flood Certification Fee" of \$18, a "Wire Transfer Fee" of \$25, an "Appraisal
22 Review" of \$550, an "Underwriting Fee-2nd Ln" of \$200, a "Broker Admin Fee-2nd
23 Ln" of \$550, a "Processing Fee-2nd Ln" of \$1,025, a "Flood Certification Fee-2n [sic]
24 Ln" of \$18, a "Wire Fee-2nd Ln" of \$25, "Recording Fees" of \$123
25

1 43. Furthermore, the Settlement Statement provides on line 811 as follows: "REALTY
2 MORTGAGE, LLC SHALL PAY A YIELD SPREAD PREMIUM OF \$18,281.25 TO
3 SUMMIT MORTGAGE."

4
5 44. Defendant REALTY MORTGAGE, LLC in fact paid this fee as a kickback in
6 connection with Defendant NAFI, Defendant DORIS ALICIA CORDOVA and
7 Defendant SUMMIT MORTGAGE Company's referral of Mr. Baalouach to
8 Defendant REALTY MORTGAGE, LLC for the purpose of making a "federally
9 related mortgage loan" to Mr. Baalouach.

10
11 45. Upon information and belief, Defendant REALTY MORTGAGE, LLC'S payment of
12 this steering fee increased Mr. Baalouach's settlement costs. Defendant REALTY
13 MORTGAGE, LLC arranged with Defendant SUMMIT MORTGAGE, Defendant
14 DORIS ALICIA CORDOVA and Defendant NAFI to charge Mr. Baalouach a higher
15 interest rate than REALTY MORTGAGE, LLC had originally approved for Mr.
16 Baalouach as this was the way of providing the funds to pay the kickback to Defendant
17 SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA and Defendant
18 NAFI.

19
20 46. Therefore, this fee for steering was paid indirectly by Mr. Baalouach through a higher
21 interest rate than that for which he was otherwise qualified and for inferior loan terms
22 than that which Mr. Baalouach could have otherwise received.

23
24 47. Defendant REALTY MORTGAGE, LLC paid this fee or kickback pursuant to an
25 agreement or understanding that business incident to or a part of a real estate

1 "settlement service" involving a "federally related mortgage loan" would be referred by
2 Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA and
3 Defendant NAFAI to Defendant REALTY MORTGAGE, LLC.
4

5 48. At all times relevant herein, Mr. Baalouach had no understanding and received no
6 explanation of the fact that Defendant REALTY MORTGAGE, LLC paid this "yield
7 spread premium" fee to Defendant SUMMIT MORTGAGE, Defendant DORIS
8 ALICIA CORDOVA and/or Defendant NAFAI as a kickback for Defendant NAFAI,
9 Defendant DORIS ALICIA CORDOVA and Defendant SUMMIT MORTGAGE
10 steering Mr. Baalouach to REALTY MORTGAGE, LLC for a higher-interest rate
11 loan.
12

13 49. At all times relevant herein, Mr. Baalouach had no understanding and received no
14 explanation of the fact that this "yield spread premium" fee was paid indirectly by Mr.
15 Baalouach through a higher interest rate than he was otherwise qualified for and than
16 Defendant REALTY MORTGAGE, LLC would have otherwise approved for him.
17

18 50. Neither Defendant REALTY MORTGAGE, LLC, Defendant NAFAI, Defendant
19 DORIS ALICIA CORDOVA nor Defendant SUMMIT MORTGAGE disclosed to Mr.
20 Baalouach that REALTY MORTGAGE, LLC'S payment of this "yield spread
21 premium" fee to Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA
22 CORDOVA and/or Defendant NAFAI constituted a kickback or referral fee at or prior
23 to the time that Defendant NAFAI, Defendant DORIS ALICIA CORDOVA and
24 Defendant SUMMIT MORTGAGE made the referral to REALTY MORTGAGE, LLC
25 in connection with REALTY MORTGAGE, LLC making a "federally related

1 mortgage loan" to Mr. Baalouach. Instead, the fee appeared on the Settlement
2 Statement listed solely as "yield spread premium" without prior, contemporaneous or
3 future explanation in Arabic (or in any language) as to its meaning.

4
5 51. Mr. Baalouach was not advised in a manner that he was reasonably capable of
6 understanding that there was a pre-payment penalty on the new loans.

7
8 52. Mr. Baalouach was not advised in a manner that he was reasonably capable of
9 understanding that the First Trust Deed had a negative amortization component.

10
11 53. Mr. Baalouach was not advised in a manner that he was reasonably capable of
12 understanding that if Mr. Baalouach made the minimum loan payment that the loan
13 balance would actually grow larger rather than smaller over time.
14
15
16
17
18
19
20

21 ***COUNT I***

22 ***RESPA VIOLATIONS***

23 ***(AGAINST REALTY MORTGAGE, LLC)***
24
25

54. All paragraphs of this Complaint are incorporated herein as if fully restated.

1
2 55. Based on the foregoing facts, REALTY MORTGAGE, LLC violated RESPA with
3 respect to Mr. Baalouach by:

4
5 56. giving or paying fees, kickbacks or other things of value to Defendant SUMMIT
6 MORTGAGE, Defendant DORIS ALICIA CORDOVA and/or Defendant NAFAI
7 pursuant to an agreement or understanding that business incident to or a part of a real
8 estate settlement service involving federally related mortgage loans would be referred
9 by Defendant NAFAI, Defendant DORIS ALICIA CORDOVA and Defendant
10 SUMMIT MORTGAGE to Defendant REALTY MORTGAGE, LLC in violation of
11 12 U.S.C. § 2607(a) and 24 C.F.R. § 3500.14(b); and

12
13 57. giving or accepting a portion, split, or percentage of charges made or received for the
14 rendering of a real estate settlement service in connection with a transaction involving
15 a federally related mortgage loan other than for services actually performed, in
16 violation of 12 U.S.C. § 2607(b) and 24 C.F.R. § 3500.14(c).

17
18 58. Pursuant to 12 U.S.C. § 2607(d), Mr. Baalouach is entitled to recover, and hereby
19 seeks to collect, from Defendant REALTY MORTGAGE, LLC an amount equal to
20 three times the amount of any and all charges for "settlement services" paid directly or
21 indirectly by Mr. Baalouach, as well as actual damages, court costs, and any and all
22 other amounts or damages allowed by RESPA.

COUNT II

RESPA VIOLATIONS

(AGAINST SUMMIT MORTGAGE, DORIS ALICIA CORDOVA AND MEHDI NAFAI)

59. All paragraphs of this Complaint are incorporated herein as if fully restated.

60. Based on the foregoing facts, Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA and Defendant NAFAI violated RESPA with respect to Mr. Baalouach by:

61. accepting fees, kickbacks or other things of value from Defendant REALTY MORTGAGE, LLC pursuant to an agreement or understanding that business incident to or a part of a real estate settlement service involving federally related mortgage loans would be referred to Defendant REALTY MORTGAGE, LLC in violation of 12 U.S.C. § 2607(1) and 24 C.F.R. § 3500.14(b); and

62. giving or accepting a portion, split, or percentage of charges made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed, in violation of 12 U.S.C. § 2607(b) and 24 C.F.R. § 3500.14(c).

63. Pursuant to 12 U.S.C. § 2607(d), Mr. Baalouach is entitled to recover, and hereby seeks to collect, from Defendant NAFAI, Defendant DORIS ALICIA CORDOVA and from Defendant SUMMIT MORTGAGE an amount equal to three times the amount of

1 any and all charges for "settlement services" paid directly or indirectly by Mr.
2 Baalouach, as well as actual damages, court costs, and any and all other amounts or
3 damages allowed by RESPA.

4
5
6
7
8 ***COUNT III***

9 ***BREACH OF FIDUCIARY DUTY***

10 ***(AGAINST SUMMIT MORTGAGE, DORIS ALICIA CORDOVA AND MEHDI NAFI)***

11
12 64. All paragraphs of this Complaint are incorporated herein as if fully restated.

13
14
15 65. Upon information and belief, Defendant SUMMIT MORTGAGE and Defendant
16 DORIS ALICIA CORDOVA, collectively were the employer of or contracted with
17 Defendant NAFI and had as their agent Defendant NAFI, who solicited and
18 intentionally induced the trust, confidence and reliance of Mr. Baalouach as home loan
19 counselor and guide for Mr. Baalouach.

20
21
22 Defendant NAFI, Defendant DORIS ALICIA CORDOVA and Defendant SUMMIT
23 MORTGAGE's role as mortgage broker for Mr. Baalouach created fiduciary duties
24 owed by Defendant NAFI, Defendant DORIS ALICIA CORDOVA and Defendant
25 SUMMIT MORTGAGE to Mr. Baalouach. These fiduciary duties were breached by

1 the conduct set forth above, that was done for the sake of self-dealing and unjustified
2 profits taken by Defendant NAFAL, Defendant DORIS ALICIA CORDOVA and
3 Defendant SUMMIT MORTGAGE through the receipt of the "yield spread premium
4 fee."

5
6 66. Mr. Baalouach is entitled to remedies that include imposition of a constructive trust
7 upon the proceeds of the transaction as were paid to Defendant SUMMIT
8 MORTGAGE, Defendant DORIS ALICIA CORDOVA and/or Defendant NAFAL, an
9 order requiring disgorgement of all proceeds paid to Defendant SUMMIT
10 MORTGAGE, Defendant DORIS ALICIA CORDOVA and/or Defendant NAFAL,
11 punitive damages and to other legal and equitable remedies to be imposed jointly and
12 severally upon Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA
13 CORDOVA and Defendant NAFAL.
14
15
16
17
18
19
20
21
22
23
24
25

COUNT IV

***DECEIT AS DEFINED IN CALIFORNIA CIVIL CODE §§1709-1710
(AGAINST SUMMIT MORTGAGE, DORIS ALICIA CORDOVA AND MEHDI NAFAI)***

67. All paragraphs of this Complaint are incorporated herein as if fully restated.

68. Upon information and belief, Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA and Defendant NAFAI, made misrepresentations to Mr. Baalouach, as set forth above, including but not limited to statements that Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA and Defendant NAFAI would act in Mr. Baalouach's best interest to obtain a loan which would be to Mr. Baalouach's benefit and to obtain a loan with the best possible terms for Mr. Baalouach. In fact, Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA and Defendant NAFAI did not obtain a loan which was to Mr. Baalouach's benefit and in fact induced Mr. Baalouach to accept a loan on worse terms and with a higher interest rate than he could have otherwise obtained so that Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA and Defendant NAFAI could receive a "yield spread premium" kickback.

69. Defendant NAFAI, Defendant DORIS ALICIA CORDOVA and Defendant SUMMIT MORTGAGE misrepresented the amount that Defendant NAFAI, Defendant DORIS

1 ALICIA CORDOVA and Defendant SUMMIT MORTGAGE were charging Mr.
2 Baalouach for their services.
3
4
5
6

7 70. Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA and/or
8 Defendant NAFI suppressed the fact that the "yield spread premium" was a kickback
9 payment and that ultimately Mr. Baalouach would end up paying for the improper
10 kick-back through higher interest rates, other loan fees and generally less favorable
11 loan terms. Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA
12 CORDOVA and Defendant NAFI were bound to disclose the nature of the kickback
13 and the consequences to Mr. Baalouach but failed to do so.
14
15
16

17 71. Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA and
18 Defendant NAFI stated to Mr. Baalouach that the cost of the home loan brokerage
19 service they provided to Mr. Baalouach would not exceed \$3,500 (three thousand five
20 hundred dollars) and that the entire cost burden of the fee was to be absorbed by the
21 lender and only the lender.
22
23
24
25

1 72. In fact, the amount of the fee paid to Defendant SUMMIT MORTGAGE, Defendant
2 DORIS ALICIA CORDOVA and/or Defendant NAFAI was \$18,281.25 and, in fact,
3 the fee paid to Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA
4 CORDOVA and/or Defendant NAFAI was indirectly paid by Mr. Baalouach through
5 higher interest rates on his loans and generally worse loan terms than Mr. Baalouach
6 could have otherwise received.
7

8
9
10 73. Defendant SUMMIT MORTGAGE's, Defendant DORIS ALICIA CORDOVA's and
11 Defendant NAFAI's misleading acts and statements regarding Defendant SUMMIT
12 MORTGAGE, Defendant DORIS ALICIA CORDOVA and Defendant NAFAI's
13 products and services in fact did mislead Mr. Baalouach and proximately damaged Mr.
14 Baalouach by causing him to pay more for products (his home loans) and services
15 (mortgage brokerage) than the amount originally purported to be the price of these
16 products and services.
17

18
19
20 74. California Civil Code § 1709 provides that:

21 One who willfully deceives another with intent to induce him to alter his position to his
22 injury or risk, is liable for any damages which he thereby suffers.

23 Deceit, within the meaning of CC § 1709, can take any of these forms (CC§1710):

24 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be
25 true;

- 1 2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground
2 for believing it to be true;
- 3 3. The suppression of a fact, by one who is bound to disclose it, or who gives information
4 of other facts which are likely to mislead for want of communication of that fact; or
- 5 4. A promise, made without any intention of performing it.

6
7 75. Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA and
8 Defendant NAFI knew that their assertion regarding their fee and who would truly
9 bear the cost of the fee was false and Defendant SUMMIT MORTGAGE, Defendant
10 DORIS ALICIA CORDOVA and Defendant NAFI had no reasonable ground for
11 believing their assertion regarding the fee to be true.
12

13
14
15 76. Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA and
16 Defendant NAFI knew that their assertion that they would procure the best loan on
17 the best terms for Mr. Baalouach was false and they had no reasonable ground for
18 believing this assertion to be true as they accepted payment for the "yield spread
19 premium" which was a kick-back from the lender, Defendant REALTY MORTGAGE,
20 LLC to Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA
21 and/or Defendant NAFI and in exchange for the Defendants inducing Mr. Baalouach
22 to contract to accept loans on worse terms than he could have possibly otherwise have
23 gotten.
24
25

1 77. Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA and
2 Defendant NAFI knew that their assertion that their fee would not exceed \$3,500 and
3 all of the cost of the fee would be placed on the lender and only the lender was false
4 and they had no reasonable ground for believing this assertion to be true as they
5 accepted payment for the "yield spread premium" which was a kick-back from the
6 lender to Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA
7 and Defendant NAFI in the amount of \$18,281.25 and that the fee was actually going
8 to be indirectly paid by Mr. Baalouach in the form of a higher interest rate and
9 generally inferior loan terms than he could have otherwise received.
10

11
12
13 78. Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA and
14 Defendant NAFI knew that Mr. Baalouach did NOT understand the phrase, "yield
15 spread premium" on the Settlement Statement and therefore were bound to disclose
16 additional, explanatory information to Mr. Baalouach and were bound to use
17 terminology and language understandable to Mr. Baalouach as the "yield spread
18 premium" payment had a dramatic, material affect on the loans Mr. Baalouach
19 received, causing him to pay a higher interest rate and receive loan terms inferior to
20 those he otherwise could have had, if the Defendants had disclosed the additional,
21 explanatory information they were bound to disclose.
22
23
24
25

1 79. Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA CORDOVA and
2 Defendant NAFAI promised that they would procure the best loan on the best terms for
3 Mr. Baalouach. The Defendants made this promise with no intention of performing it
4 as they knew they would receive a kick-back "yield spread premium" from the lender
5 in exchange for inducing Mr. Baalouach to contract to accept loans with higher interest
6 rates and on worse terms than Mr. Baalouach could have possibly otherwise have
7 gotten.
8

9
10
11 80. The acts of Defendant SUMMIT MORTGAGE, Defendant DORIS ALICIA
12 CORDOVA and Defendant NAFAI as set forth above constitute Deceit under Cal. CC
13 §§1709-1710 thereby entitling Mr. Baalouach to his actual damages, including but not
14 limited to: loans at the actual approval rates and loan terms at the actual approval rate
15 rather than inflated rates and more oppressive terms.
16
17
18
19

20
21 **PRAYER FOR RELIEF**

22
23 81. WHEREFORE, Mr. Baalouach requests judgment and relief as follows:

- 24 a. under Count I against REALTY MORTGAGE, LLC for treble damages and costs
25 for RESPA violations;

- 1 b. under Count II against SUMMIT MORTGAGE, DORIS ALICIA CORDOVA
2 and MEHDI NAFI, treble damages and costs for RESPA violations;
3
4 c. under Count III against SUMMIT MORTGAGE, DORIS ALICIA CORDOVA
5 and MEHDI NAFI, actual damages, imposition of a constructive trust upon the
6 proceeds of the transaction as were paid to SUMMIT MORTGAGE, DORIS
7 ALICIA CORDOVA and/or MEHDI NAFI, and an order requiring
8 disgorgement of all proceeds paid to SUMMIT MORTGAGE, DORIS ALICIA
9 CORDOVA and/or MEHDI NAFI and to punitive damages for breach of
10 fiduciary duty;
11
12 d. under Count IV against SUMMIT MORTGAGE, DORIS ALICIA CORDOVA
13 AND MEHDI NAFI, actual damages for Deceit;
14 e. such other relief to which Mr. Baalouach may be entitled, or as determined just
15 and appropriate by this Court.

16
17 **DEMAND FOR JURY TRIAL**

18
19 Dated: October 23rd, 2007
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT A

U.S. Department of Housing and Urban Development

OMB No. 2502-0365

A. Settlement Statement



OLD REPUBLIC TITLE COMPANY

B. TYPE OF LOAN			6. File Number	7. Loan Number	8. Mortgage Insurance Case Number
1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FmHA	3. <input checked="" type="checkbox"/> Conv. Unins.	0111006084-JD	7531026872	
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.				

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower	E. Name and Address of Seller	F. Name and Address of Lender
Ali Baalouach 604 Geary Ave San Francisco, CA 94102		Realty Mortgage, LLC 2901 Douglas Boulevard Suite 205 Roseville, CA 95661

G. Property Location	H. Settlement Agent	I. Settlement Date
68 Cayuga Ave San Francisco, CA 94101 (See Attachment)	Old Republic Title Company Place of Settlement 3000 Clayton Road Concord, CA 94519	11/1/2006

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER		400. GROSS AMOUNT DUE TO SELLER	
101. Contract sales price		401. Contract sales price	
102. Personal property	5,854.04	402. Personal property	
103. Settlement charges to borrower (line 1400)	687,315.53	403.	
104. PAYOFF EXISTING LOAN	85,372.48	404.	
105. PAYOFF EXISTING LOAN	4,762.88	405.	
R.E. Tax Payment (Lot 21 Block 6752)			
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
113.		413.	
114.		414.	
120. GROSS AMOUNT DUE FROM BORROWER	783,304.93	420. GROSS AMOUNT DUE TO SELLER	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER		500. REDUCTIONS IN AMOUNT DUE TO SELLER	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan 1st	731,250.00	502. Settlement charges to seller (line 1400)	
Principal amount of new loan 2nd	146,250.00	503. Existing loan(s) taken subject to	
		504.	
		505.	
		506.	
		507.	
		508.	
		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER	877,500.00	520. TOTAL REDUCTION AMOUNT DUE SELLER	
300. CASH AT SETTLEMENT FROM/TO BORROWER		600. CASH AT SETTLEMENT TO/FROM SELLER	
301. Gross amount due from borrower (line 120)	783,304.93	601. Gross amount due to seller (line 420)	
302. Less amounts paid by/for borrower (lines 200-219)	(877,500.00)	602. Less reductions in amount due seller (line 520)	
303. CASH <input type="checkbox"/> FROM <input checked="" type="checkbox"/> TO BORROWER	94,195.07	603. CASH <input type="checkbox"/> TO <input type="checkbox"/> FROM SELLER	

Section 5 of the Real Estate Settlement Procedures Act (RESPA) requires the following: • HUD must develop a Special Information Booklet to help persons understand how to finance the purchase of residential real estate to better

Section 4(a) of RESPA mandates that HUD develop and prescribe this standard form to be used at the time of loan settlement to provide full disclosure of all charges imposed upon the borrower and seller. These are third party disclosures that are designed to provide the

Escrow No.: 0111006084-30

L SETTLEMENT CHARGES			Paid From Borrower's Funds At Settlement	Paid From Seller's Funds At Settlement
700. Total sales/broker's commission based on price \$	@	%=		
Division of commission (line 700) as follows:				
701.				
702.				
703. Commission disbursed at settlement				
704.				
800. ITEMS PAYABLE IN CONNECTION WITH LOAN	See Attachment for Subordinate Financing Charges		1,818.00	
801. Loan Origination Fee				
802. Loan Discount			350.00	
803. Appraisal Fee				
804. Credit Report				
805. Lender's Inspection Fee				
806. Mortgage Insurance Application Fee				
807. Assumption Fee			65.00	
808. Tax Service Fee			775.00	
809. Underwriting Fee			18.00	
810. Flood Certification Fee				
811. Realty Mortgage, LLC shall pay a yield spread premium of \$18,281.75 to Summit Mortgage			25.00	
812. Wire Transfer Fee			550.00	
813. Appraisal Review				
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE			25.04	
901. Interest, 10/31/06 to 11/01/06, 1 days @ \$25.04				
1000. RESERVES DEPOSITED WITH LENDER				
1100. TITLE CHARGES			30.00	
1106. Notary Fees to Jay Oxendine				
1108. Title insurance to (includes above items numbers:) 1102, 1103, 1106, Endorsements and Additional Title Fees, if any				
1109.				
1111. Integrated Refinance Insurance and Settlement Service			2,075.00	
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES				
1201. Recording fees: Deed \$ Mortgage \$ 123.00 Releases \$			123.00	
1202. City/county tax/stamps: Deed \$ Mortgage \$				
1203. State tax/stamps: Deed \$ Mortgage \$				
1204.				
1205.				
1300. ADDITIONAL SETTLEMENT CHARGES				
1301.				
1302.				
1303.				
1304.				
1305.				
1306.				
1307.				
1308.				

Mortgage No.: 0111006084-JO

Loan No.: 7531026872

Attachment to HUD Statement

PROPERTY LOCATION

198 Rousseau
San Francisco, CA 94101

===== Continuation from Page1 =====

BUYER ADJUSTMENTS

SELLER ADJUSTMENTS

AMOUNTS PAID BY OR IN BEHALF OF BORROWER

DEPOSIT OR EARNEST MONEY -- LINE 201

PRINCIPAL AMOUNT OF NEW LOAN(S) -- LINE 202

Realty Mortgage, LLC
2901 Douglas Boulevard Suite 205
Roseville, CA 95661
Loan No.: 7531026872
Position: 1
Principal amount

731,250.00

Realty Mortgage LLC
2901 Douglas Boulevard Suite 205
Roseville, CA 95661
Loan No.: 7531026873
Position: 2
Principal amount

146,250.00

Escrow No.: 0111006084-JO

Attachment to HUD Statement

Lender Realty Mortgage LLC
2901 Douglas Boulevard Suite 205
Roseville, CA 95661

Loan No. 7531026873

Subordinate Financing Charges

Item	Borrower	Seller
Wire Fee - 2nd Ln	25.00	
Underwriting Fee - 2nd Ln	200.00	
Flood Certification - 2n Ln	18.00	
Broker Admin Fee - 2nd Ln	550.00	
Processing Fee - 2nd Ln	1,025.00	
	<hr/>	<hr/>
Total	1,818.00	